

Government of the District of Columbia
Vincent C. Gray, Mayor
Department of Insurance, Securities and Banking



William P. White
Commissioner

IN THE MATTER OF:)
)
MARK KIMSEY and)
K&Z PARTNERS, LLC,) ADMINISTRATIVE ORDER
aka CAPFI PARTNERS, LLC,) ORDER NO. SB-CO-02-12
)
Respondents)

ADMINISTRATIVE CONSENT AGREEMENT AND ORDER

This Administrative Consent Agreement and Order ("Order") is made and entered into between and among the Department of Insurance, Securities and Banking ("Department") and K&Z Partners, LLC ("K&Z" or "K&Z Partners"), also known as CapFi Partners, LLC, and Mark Kimsey ("Kimsey" collectively, "Respondents");

WHEREAS, the Commissioner of the Department (hereinafter "Commissioner"), having the authority to administer and provide for enforcement of the Securities Act of 2000, effective September 29, 2000 (D.C. Law 13-203, 47 DCR 7837, D.C. Official Code §§ 31-5601.01 *et seq.* (2001 Ed.)) ("Act"), and upon due consideration of the subject matter hereof, has determined that grounds exist to issue an order imposing a civil penalty against Respondent, pursuant to D.C. Official Code § 31-5606.02 (b)(4);

WHEREAS, Respondent K&Z Partners is a registered broker-dealer in several jurisdictions, including the District of Columbia, Virginia, Maryland, New Jersey, and New York. Respondent K& Z Partners is also a registered investment adviser in New Jersey.¹ On October 12, 2010, K&Z notified the Department on its Form BD that it changed its name to CapFi Partners, LLC.;

WHEREAS, Respondent Kimsey is the Managing Member, Principal, Chief Executive Officer, and Chief Compliance Officer of K&Z Partners. Respondent Kimsey is registered as a

¹ On March 30, 2011 the Department issued an investment adviser license to Respondent K&Z Partners, pending review of prior transactions.

broker-dealer agent for K&Z Partners in several jurisdictions, including the District of Columbia, Virginia, Maryland, New Jersey, and New York;²

WHEREAS, prior to June 8, 2009, Respondent K&Z Partners' principal place of business was 1370 Avenue of Americas, New York, New York, 10019. On June 8, 2009, Respondent K&Z Partners notified the Department on Form BD that it had moved its principal place of business to 2445 M Street, NW, Washington, DC 20037. At the time, Respondent K&Z did not have an investment adviser or investment adviser representative license in the District of Columbia, in violation of D.C. Official Code § 31-5602.02, but had all other relevant licenses;

WHEREAS, Respondents would like to resolve this matter and admit that there was sufficient evidence to find that the Respondents violated D.C. Official Code § 31-5602.02 of the Act;

WHEREAS, Respondents admit the Findings of Facts and Conclusions of Law, and agree to pay the Department a civil penalty and licensing fees in the amount of \$1,750.00 (\$1,000.00 civil penalty; \$750 licenses fees) for opening an office as an investment adviser in the District of Columbia without an investment adviser license, on the part of Respondent K&Z Partners, and an investment adviser representative license, on the part of respondent Kimsey;

WHEREAS, the Department agrees not to pursue any additional enforcement action pursuant to the specific activity alleged in the Consent Agreement and Order, and will forego imposing a civil penalty in the future, if Respondents adhere to the terms of the Administrative Consent Agreement and Order;

WHEREAS, Respondents, as evidenced by the authorized signature on the consent to the Order below, admit the jurisdiction of the Department, voluntarily consent to the entry of this Order, and elect to waive any right to a hearing and appeal under the District of Columbia Administrative Procedure Act, D.C. Official Code §§ 2-509(a) and 2-510(a) (2001); the Rules of Practice and Procedures for Hearings in the District of Columbia, 26 DCMR §§ B300 *et seq.*; and sections 602(b) and 803(a) of the Act, with respect to this Order; and

NOW, THEREFORE, the Commissioner of the Department, as administrator of the Act, hereby enters this Order:

FINDINGS OF FACT

1. Respondent K&Z Partners is a registered broker-dealer in multiple jurisdictions, including the District of Columbia, Virginia, Maryland, New Jersey, and New York. Respondent K&Z Partners is also a registered investment adviser in New Jersey.³
2. Respondent Kimsey is the Managing Member, Principal, Chief Executive Officer, and Chief Compliance Officer of K&Z Partners. Respondent Kimsey is registered as a

² On March 30, 2011 the Department issued an investment adviser representative license to Respondent Kimsey, pending review of prior transactions.

³ On March 30, 2011 the Department issued an investment adviser license to Respondent K&Z Partners, pending review of prior transactions.

broker-dealer agent for K&Z Partners in multiple jurisdictions, including the District of Columbia, Virginia, Maryland, New Jersey, and New York.⁴

3. Prior to June 8, 2009, Respondent's principal place of business was 1370 Avenue of Americas, New York, New York, 10019. On June 8, 2009, Respondent K&Z Partners notified the Department on Form BD that it had moved its principal place of business to 2445 M Street, NW, Washington, DC 20037.
4. On July 6, 2009 the Department approved K&Z's broker-dealer license, and as a result the Examinations Division conducted a targeted Meet and Greet examination. A Meet and Greet examination is for newly licensed firms in the District where the Examinations Division reviews the firm's filings on the CRD and IARD systems, as well as public records. The Examinations Division meets with every new DC firm to discuss the examinations process, regulatory requirements for the new broker-dealers or investment advisers, any deficiencies found in the preliminary review, and instructions to correct the deficiencies, if any.
5. On October 2, 2009 the Examinations Division conducted the Meet and Greet examination, and determined that K&Z provided investment advisory services in the district without a license based on the following factors:
 - a. Item 1E and F and K&Z's Form BD stated that K&Z's main address and mailing address were located in the District of Columbia.
 - b. Item 12S of K&Z's Form BD stated that K&Z provided investment advisory services;
 - c. K&Z was licensed as an investment adviser in New Jersey and had filed a Form ADV on the IARD system.
 - d. Item 5G of K&Z's Form ADV, Part 1A stated that K&Z provided financial planning services, selection of other advisers, and other investment adviser services;
 - e. Item 5H of K&Z's Form ADV, Part 1A stated that K&Z provided financial planning services to one to ten clients during its last fiscal year; and
 - f. K&Z was not eligible for a *de minimis* exemption from the licensing requirements of D.C. Official Code § 31-5602.02(a) because it was located in the District.
6. Although at the time of the Meet and Greet examination item 1F of Form ADV, Part 1A stated that K&Z's principal office and place of business was located in New York, item 1E of Form BD stated that K&Z's main address was located in the District. Just after the Meet and Greet examination on October 5, 2009, K&Z amended item 1F of Form ADV, Part 1A to update its principal office and place of business to reflect the District of Columbia address.
7. After the Meet and Greet Examination, the Department's examiners sent a letter

⁴ On March 30, 2011 the Department issued an investment adviser representative license to Respondent Kimsey, pending review of prior transactions.

discussing the investment adviser licensing deficiencies with Respondent Kimsey, the firm's Managing Member, Principal, Chief Executive Officer, and Chief Compliance Officer. The letter instructed Respondent to address the licensing concerns and apply for an investment adviser license with the Department.

8. On October 5, 2009 K&Z amended item 1F of Form ADV, Part 1A to state that it had moved its principal office and place of business to 2445 M Street NW, Second Floor, Washington, DC 20037. Although K&Z maintained an office location in the District where it offered investment advisory services, K&Z has asserted that it did not have advisory clients while doing business in the District prior to obtaining the required investment advisory licenses.
9. On November 24, 2009 K&Z amended item 1 of Form ADV, Part 1B to apply for an investment adviser license in the District.
10. In a letter dated December 1, 2009 the Department notified K&Z that it had received K&Z's investment adviser license application, but that it needed to suspend the application.
11. The December 1, 2009 letter instructed Respondent K&Z Partners to respond and provide the requested documentation by December 22, 2009; otherwise the Department's Licensing Division would consider the investment adviser license application withdrawn. The Licensing Division Corresponded with Maureen Garry ("Garry") on behalf of K&Z, but Garry had difficulty submitting the Form ADV, Part II on IARD.
12. On March 4, 2010 the Department notified Respondent K&Z Partners that it had not addressed all the concerns raised in the Meet and Greet examination, including the need to obtain an investment adviser license.
13. On April 22, 2010 the Department notified K&Z that its licensing application was still deficient and that if it did not receive a response within fifteen days, the Commissioner would consider the application withdrawn. The Department did not receive any response.
14. On June 2, 2010 the Department determined that K&Z had abandoned its application and updated the application's status on the IARD system to reflect this information. K &Z asserts that some of the correspondence sent to K&Z by the Department was not received by K&Z.
15. On June 22, 2010 the Department sent a letter via certified mail to Kimsey notifying him that he and Respondent K&Z were operating without an investment adviser license and investment adviser representative license. The letter instructed Kimsey to demonstrate by July 6, 2010 that he and K&Z were in full compliance with the licensing requirements or the Securities Bureau intended to recommend that the Department bring enforcement action against them.

16. On June 23, 2010 Kimsey received and signed for the certified letter. That day, Kimsey left a voicemail message for one of the Department's examiners stating that he had received the letter and that he believed that the application was finished. He stated that he would look into the investment adviser application.
17. Between June 8, 2009 and March 29, 2011, K&Z Partners was not licensed as an investment adviser in the District of Columbia. Also, Kimsey was not licensed as an investment adviser representative during that period.
18. The Department acknowledges that K&Z and Kimsey have since obtained all required Investment Advisory licenses and the Department acknowledges that K&Z and Kimsey are currently in full compliance with all licensing requirements for the District.

VIOLATION

D.C. Official Code § 31-5602.02(a), makes it unlawful for a person to transact business in the District of Columbia as an investment adviser or an investment adviser representative unless the person is licensed, or exempt from licensure, or the person has no place of business in the District.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to D.C. Official Code § 31-5606.01(a)(1).
2. The Commissioner finds that K&Z Partners opened an office as an investment adviser in the District of Columbia without being licensed or authorized to do so.
3. The Commissioner finds that Mark Kimsey held himself out as an investment adviser representative in the District of Columbia without being licensed or authorized to do so, in violation of D.C. Official Code § 31-5602.02.

ORDER

1. On the basis of the Findings of Fact and Conclusions of Law, Respondents consent to enter into this Consent Order for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any violation of law.
2. This Consent Order concludes the concerns of the Department and any other action that the Commissioner could commence on behalf of the District of Columbia as it relates to K&Z, and its successor entities (CapFi Partners, LLC), and Kimsey; provided, however, that the Commissioner may enforce any claims arising from or relating to any violation of this Consent Order.
3. This Consent Order shall become final upon its entry by the Department.

4. Respondents will continue to provide to the Department all information reasonably necessary to demonstrate the Respondents' compliance with the terms of this Consent Order.
5. Respondents shall pay an amount of One Thousand Seven Hundred and Fifty dollars (\$1,750) to the Department as a civil monetary penalty (including licensing fees) pursuant to District of Columbia Official Code § 31-5606.02(b)(4), made payable to the 'D.C. Treasurer' to be deposited into the District of Columbia's General Fund, pursuant to District of Columbia Official Code § 1-204.50. This amount shall be paid to the District of Columbia Department of Insurance, Securities and Banking within ten (10) days of the entry of this Agreement and sent via regular mail or USPS Express Mail to D.C. Department of Insurance, Securities and Banking, Securities Bureau, P.O. Box 92660, Washington, D.C. 20090. If sent via USPS Express Mail or other postal courier services to D.C. Department of Insurance, Securities and Banking, Securities Bureau, Wells Fargo Bank, 7175 Columbia Gateway Drive, Lockbox #92660, Columbia MD 21046.
6. If payment is not made as agreed, the Commissioner may vacate this Consent Order, at its sole discretion, upon ten days' notice to K&Z Partners and Kimsey and without opportunity for administrative hearing, and K&Z Partners and Kimsey agree that any statute of limitations applicable to the subject of the investigation and any claims arising from or relating thereto are tolled from and after the date of this Consent Order until such date that the Commissioner vacates this Consent Order.
7. This Agreement and any dispute related thereto shall be construed and enforced in accordance, and governed by, the laws of the District of Columbia, without regard to any choice of law principles.
8. Respondents represent, warrant, and agree that they have had the opportunity to receive independent legal advice from its attorney(s) with respect to the advisability of executing this Agreement.
9. K&Z Partners, and its successors, and Kimsey, through its execution of this Consent Order, voluntarily waive their rights to a hearing on this matter and to judicial review of this consent order under D.C. Official Code §§ 31-5606.02 (b) and 31-5608.03.

AGREED AND CONSENTED TO:

K&Z PARTNERS, LLC (CapFiPartners, LLC)

BY:



Mark Kimsey, Managing Partner

1/13/12
(Date)

SEAL

APPROVED and so ORDERED:

In Witness Whereof, I have hereunto
set my hand and affixed the official seal
of the Department of Insurance, Securities
and Banking, this 19th day of January
2012


William P. White,
Commissioner